

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BRET JON SHOMIN,

Petitioner,

Case No. 13-cr-20193

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

UNITED STATES OF AMERICA,

Respondent.

**ORDER DISMISSING PETITIONER'S MOTION TO VACATE SENTENCE
PURSUANT TO PETITIONER'S REQUEST, AND CLOSING CIVIL ACTION**

On June 9, 2016, Petitioner Bret Jon Shomin filed a motion to vacate his sentence under 28 U.S.C. § 2255. *See* ECF No. 22. He argues that pursuant to the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down the residual clause of the Armed Career Criminal Act as unconstitutionally vague), his sentence under the residual clause of the career offender provision of the United States Sentencing Guidelines must be vacated. His petition was referred to Magistrate Judge Patricia T. Morris. *See* ECF No. 25. The Government subsequently filed a motion to stay the case pending the outcome of *Beckles v. United States*, 136 S.Ct. 2510 (2016). ECF No. 27. On September 13, 2016 the Judge Morris issued a report recommending that the proceedings be stayed. *See* ECF No. 30.

On March 6, 2017 the Supreme Court reached a decision in *Beckles*, holding that the sentencing guidelines are not subject to void for vagueness challenges under the Fifth Amendment Due Process clause. *See Beckles v. United States*, No. 15-8544, 2017 WL 855781, at *3 (U.S. Mar. 6, 2017). Subsequent to that opinion, Petitioner Rogers has given notice that he

wishes to voluntarily dismiss his § 2255 petition. *See* ECF No. 32. The petition will therefore be dismissed.¹

Accordingly, it is **ORDERED** that Petitioner Shomin's motion to vacate sentence under 28 U.S.C. § 2255, ECF No. 22, is **DISMISSED**.

It is further **ORDERED** that the Government's motion to dismiss or stay, ECF No. 27, is **DENIED as moot**.

It is further **ORDERED** that Judge Morris's report and recommendation, ECF No. 30, is **REJECTED as moot**.

It is further **ORDERED** that the corresponding civil action, *Shomin v. United States*, 16-cv-12109 (E.D. Mich. June 9, 2016), is **CLOSED**.

Dated: April 7, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 7, 2017.

s/Kelly Winslow for
MICHAEL A. SIAN, Case Manager

¹ The effect the filing and voluntary dismissal of the petition may have on Shomin's rights and obligations under 28 U.S.C. § 2255(h) will be determined if and when he attempts to file a subsequent petition.